

BEFORE THE
UNITED STATES COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
WASHINGTON, D.C.

Received

APR 27 2015

Copyright Royalty Board

In re

DETERMINATION OF ROYALTY
RATES AND TERMS FOR
EPHEMERAL RECORDING AND
DIGITAL PERFORMANCE OF SOUND
RECORDINGS (*WEB IV*)

DOCKET NO. 14-CRB-0001-WR
(2016-2020)

**SOUNDEXCHANGE'S OPPOSITION TO IHEARTMEDIA'S EMERGENCY
MOTION CHALLENGING SOUNDEXCHANGE'S ASSERTION OF
PRIVILEGE AND ATTEMPT TO CLAWBACK DOCUMENTS**

The Judges should deny iHeart's "emergency" motion challenging SoundExchange's April 22, 2015 letter "clawing back" inadvertently produced privileged documents. iHeart's motion asks for immediate relief regarding a total of 12 documents that SoundExchange identified.¹

As to seven of the 12 documents in issue, the motion is moot. SoundExchange's counsel has re-reviewed these documents and had the opportunity to discuss them with the record company members who would hold the privilege claim over such documents. As a result of that re-review, we have determined that the portions of those documents that SoundExchange clawed

¹ SoundExchange's letter identified a total of 64 documents. This opposition discusses the 12 documents that iHeart challenges on an "emergency" basis, purportedly because iHeart wants to use at least some of these documents with SoundExchange's first witness on April 28. SoundExchange is re-reviewing the remaining documents identified in its April 22 letter. SoundExchange will promptly notify iHeart and the other Services if it decides to withdraw any privilege claim. If any disputes remain, SoundExchange will meet and confer with the Services, and the parties can notify the Judges of an efficient mechanism for resolving those disputes.

back on April 22 primarily contain or reflect business rather than legal advice.² Accordingly, iHeart may use those seven documents as originally produced.

The five remaining documents that iHeart identifies are privileged.³ iHeart's objections to SoundExchange's clawbacks of these documents are meritless.

First, all of them reflect legal advice. Contrary to iHeart's claim, SoundExchange does not contend that "the mere mention of the CRB and rate-setting proceedings" makes business advice legal advice. iHeartMedia's Emergency Motion Challenging SoundExchange's Assertion of Privilege and Attempt to Clawback Documents ("Mot. at 1"). However, if a discussion (among other business people, lawyers or both) discusses or reflects legal advice regarding how issues may be litigated in future rate-setting proceedings, then that most certainly is protected by privilege.⁴ And, here, declarations from the parties that possess the privilege attest to the circumstances and legal character of these five documents.

Second, SoundExchange properly exercised its clawback rights over these documents in accordance with the Protective Order. SoundExchange notified the Services of its intention to

² The seven documents are attached to iHeart's motion at Exhibit 2 (SNDEX0185572); Exhibit 3 (SNDEX0210969); and Exhibit 8 (SNDEX0259978); Exhibit 9 (SNDEX0264910); Exhibit 10 (SNDEX0424995); Exhibit 11 (SNDEX0426042); Exhibit 12 (SNDEX0426141).

³ The five documents are attached to iHeart's motion at Exhibit 1 (SNDEX0126901); Exhibit 4 (SNDEX0252015); Exhibit 5 (SNDEX0259841); Exhibit 6 (SNDEX0259933); Exhibit 7 (SNDEX0259973).

⁴ Counsel for iHeart concedes that such communications are privileged as he applied the same approach in Mr. Steven Cutler's deposition:

[REDACTED]

(Deposition of Mr. Cutler at 156: 4-11.)

claw these documents back within 48 hours of being served with the Services' supplemental expert reports which quoted these documents, and within the five business day window from being served with copies of these privileged documents among Licensees' numerous exhibits.

Third, SoundExchange did not waive privilege by introducing Prof. Rubinfeld's written rebuttal testimony. The privileges that cover these documents are not SoundExchange's to waive; the privilege for each belongs to the respective record company from whose files the document was produced. In all events, there is no waiver. The *Bilzerian* case upon which iHeart relies applies where a party puts its state of mind at issue—such as its good faith belief in the lawfulness of its conduct—and the opposing party in fairness cannot contest the asserted belief without inquiring into privileged communications concerning that belief. *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991). Dr. Rubinfeld's testimony does not put his, SoundExchange's, or any record company's "state of mind" in issue. The question whether the statutory rate has an effect on licensing discussions between copyright owners and either interactive or non-interactive service providers is not disputed, much less a question of "state of mind" or a subject that requires discovery into privileged communications.

BACKGROUND

iHeart's motion is a none-too-subtle attempt to "poison the well." iHeart paints a picture in which SoundExchange saw how the Services' April 21, 2015, supplemental expert reports used supposedly business-only communications and then strategically tried to disappear documents for fear they undermined Prof. Rubinfeld's testimony. Disregarding established principles of procedure and attorney ethics, iHeart unconstrainedly uses the contents of documents that it knows to be the subject of privilege claims to tell its story. The story that iHeart tells, however, is a fabrication.

In the first place, the nature of discovery—particularly under the streamlined procedures that apply here—is such that privileged documents inevitably will make it through even the most diligently searched and carefully reviewed pre-production processes. To date, SoundExchange has produced more nearly half a million pages of documents. Just in response to the Services’ most recent supplemental requests for documents, SoundExchange produced more than 3,100 documents, comprising more than 41,000 pages. The potential for inadvertent production is compounded where, as here, (1) a party produces not its own documents but the documents of third parties (here, record company members of SoundExchange); (2) the documents relate to communications with numerous in-house and outside counsel who provide advice concerning complex negotiations and matters intertwined with potential legal proceedings; and (3) the productions are replete with email and PowerPoint communications, which frequently contain legal advice (either directly from lawyers or relayed through non-lawyers) interspersed among business communications.

In light of the volume of documents and the complexity of the privilege determinations, the Protective Order—consistent with Federal Rule of Civil Procedure 26(b)(5)(B) and numerous analogous state law rules—provides a robust “clawback” procedure in the case of inadvertently produced documents as follows:

The inadvertent production or filing of any document or other information in connection with this proceeding *shall be without prejudice to any claim that the inadvertently disclosed material is privileged* under the attorney-client or other privilege, or protected from disclosure as work product, and *the Producing Party or filing party shall not be held to have waived any rights by inadvertent production*. In the event that a Producing Party discloses or files inadvertently material that the Producing Party or filing party considers to be privileged in whole or in part, the Producing Party or filing party may retrieve the inadvertently disclosed material by giving written notice to the Receiving Party(ies) not later than five (5) business days after discovery of the inadvertent production or filing of such material, that the Producing Party or filing party claims the material, in whole or in part, to be privileged. The notice must state the nature of the privilege.

Protective Order, Section IV.E.1 (emphasis added).

SoundExchange is hardly the only party that has relied on the Protective Order in clawing back documents. iHeart itself has notified the participants of inadvertently produced documents at least five times in these proceedings, including two clawback letters covering 16 documents in just the past month; the documents that iHeart clawed back included multiple iHeart-produced documents that SoundExchange tried to use to question iHeart's lead deal negotiator (Steven Cutler) but as to which iHeart's counsel blocked deposition questioning. Decl. of Rose Leda Ehler in Support of SoundExchange's Opp'n to iHeartMedia's Emergency Mot. Challenging SoundExchange's Assertion of Privilege and Attempt to Clawback Documents ("Ehler Decl.") ¶ 4. Pandora likewise has already clawed back more than 60 documents. *Id.* ¶ 5. In short, the inadvertent production of privileged documents is a fact of life in these proceedings.

The Protective Order provides that, "[u]pon receipt of notice [of inadvertent disclosure], each Receiving Party shall return promptly [] to the Producing Party or filing party the original and all copies of the material to which the notice pertains." Protective Order, Section IV.E.2. Neither the Protective Order nor the regulations specify the procedure for challenging a claim of inadvertent disclosure. The Federal Rules of Civil Procedure do address the proper procedure, and they make it clear that the receiving party may not "use" the information in issue unless and until a court has determined it is not privileged:

After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; *must not use or disclose the information until the claim is resolved*; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim.

Fed. R. Civ. P. 26(b)(5)(B) (emphasis added). A receiving party's pre-ruling publication of documents asserted to be privileged is sanctionable in federal court. *See Cars R Us Sales & Rentals, Inc. v. Ford Motor Co.*, No. 08 C 50270, 2009 WL 1703123, at *1 (N.D. Ill. June 18,

2009) (“This publication of the document violated Federal Rule of Civil Procedure 26(b)(5)(B). Defendant's counsel are experienced litigators and know better than to proceed in this manner. Under appropriate circumstances, the court could disqualify counsel for this type of conduct.”).

iHeart did not comply with any of these procedures. It did not return the documents at issue to SoundExchange. It did not “sequester” the documents. And it has not abided by the obligation to refrain from “us[ing] or disclos[ing] the information” pending resolution of its challenge to SoundExchange’s clawback. iHeart instead quoted liberally from the very portions of the documents that it knew to be the subject of privilege claims. Nor did iHeart file its motion under seal. It instead served its motion and supporting declaration (including copies of the pertinent documents) to outside counsel for all parties, including those who have settled.

iHeart also takes great liberties with the facts surrounding the prior use of documents in these proceedings. For example, in iHeart’s narrative, iHeart and other Services repeatedly used the documents in issue more than five business days before SoundExchange’s letter (*i.e.*, before April 15, 2015), thereby vitiating SoundExchange’s right to rely on Section IV.E.1 of the Protective Order. *See* Mot. at 3-4. In fact, of the 12 documents in issue, only *three* had been cited or quoted in the Services’ March 30 motion for a subpoena to Apple or at the April 14 deposition of Prof. Rubinfeld regarding the Apple agreements. iHeart also claims that two of the exhibits “were included on Pandora’s exhibit list,” suggesting that SoundExchange long ago should have recognized the basis for its privilege claim. *See* Mot. at 4. In fact, Pandora served its numerous proposed exhibits (including those documents attached as Exhibits 3 and 5 to iHeart’s motion) on April 16—within the five business day window of Section IV.E.1.

Finally, iHeart takes great liberties in characterizing the purported significance of these documents to issues it claims are in dispute. The basic thrust of iHeart’s relevance claim is that

Prof. Rubinfeld purportedly said that all of the license agreements with Apple and with other services described in Section III.E of his written rebuttal testimony (“WRT”) “‘were not contemplated to be the centerpiece of either party’s case in the CRB,’” and “‘may well be less in the shadow of the statutory proceeding than ones created and proposed by the Services.’” Mot. at 3 (quoting Rubinfeld Corrected WRT App. 2 ¶ 8.) In fact, both of these quotations relate only to the Sony and Warner agreements with Apple, not with the “Section III.E services.” Even as to Apple, Prof. Rubinfeld’s statement is not that either of the record companies (Sony or Warner), on the one hand, or Apple, on the other, subjectively believed their respective agreement would not be put before the CRB and thereby that the agreement was in fact “less in the shadow” of the statutory license than the iHeart-Warner or Pandora-Merlin agreements. Rather, Prof. Rubinfeld pointed to objective evidence of the parties’ mutual agreements that [REDACTED]

[REDACTED]

[REDACTED]

ARGUMENT

I. THE DOCUMENTS ARE PRIVILEGED

The five documents at issue all include or reflect communications to or from in-house or outside counsel regarding confidential advice on legal matters. The law is well established that confidential communications to or from in-house counsel pertaining to legal advice are privileged. *Upjohn Co. v. United States*, 449 U.S. 383, 394 (1981) (“The communications at issue were made by Upjohn employees to counsel for Upjohn acting as such, at the direction of corporate superiors in order to secure legal advice from counsel. . . . Consistent with the underlying purpose of the attorney-client privilege, these communications must be protected against compelled disclosure.”) (footnotes omitted). It also is well established that, regardless of whether a lawyer (in-house or external) is copied, confidential communications between

employees of the corporation-client reflecting a request for or the provision of legal advice are protected by the privilege. *See, e.g., United States v. ChevronTexaco Corp.*, 241 F. Supp. 2d 1065, 1077 (N.D. Cal. 2002) (“Materials, transmitted between nonlawyers, that reflect matters about which the client intends to seek legal advice are comparable to notes a client would make to prepare for a meeting with her lawyer—notes which could serve as an agenda or set of reminders about things to ask or tell counsel. It would undermine the purpose of the attorney-client privilege not to extend protection to such notes. Therefore, internal communications that reflect matters about which the client intends to seek legal advice are protected.”); *Comtide Holdings, LLC v. Booth Creek Mgmt. Corp.*, No. 2:07-cv-1190, 2010 WL 5014483, at *2 (S.D. Ohio Dec. 3, 2010) (“This legal proposition, which Comtide apparently does not contest, has been applied by a number of courts to determine if communications among non-lawyers are protected by the attorney-client privilege.”).

Here, the factual predicates substantiating the basis for the privilege claim concerning each of the five documents are set forth in respective declarations from in-house counsel at each of the three record companies that possesses the privilege concerning one or more of these documents. *See* Declarations of Scott Bauman (UMG), Jeff Walker (Sony), and Ellen Hochberg (Warner) filed concurrently herewith. Each declaration describes the subject matter of the communication, the general nature of the legal advice sought or provided (without revealing its contents), the counsel whose advice was sought or provided, and the facts showing that the company in issue maintained the communication in confidence. This showing amply sustains any burden of establishing the basis for the privilege claims.

Contrary to iHeart’s characterization, the privilege claims here are not based “simply” on the fact that they arose within “the overall context of a statutory licensing scheme.” Mot. at 6

(quoting Order Denying in Part and Granting in Part SoundExchange’s Mot. to Reconsider at 3, Dkt. No. 2005-1 CRB DTRA (Mar. 15, 2006) (“*DTRA Order*”). The communications at issue all concern “legal strategy,” concerning the specific implications that terms then under consideration could have if other parties proffered the same as benchmarks in litigated proceedings before the Judges. *See DTRA Order* at 3.

SoundExchange is not alone in these proceedings in claiming privilege over the provision of information to or from lawyers regarding the legal implications of these proceedings for potential license terms. To our knowledge, neither iHeart nor Pandora (nor any other Service-side participant) has produced—or, if they did produce, has permitted to remain in the production—any internal document discussing how either of them anticipated their proffered benchmarks might be used in these proceedings. It strains credulity, of course, to believe that the Services have not withheld such documents on privilege grounds.

II. SOUNDEXCHANGE DID NOT “IMPLIEDLY WAIVE” THE PRIVILEGE

Citing *United States v. Bilzerian*, 926 F.2d 1285 (2d Cir. 1991), iHeart next argues that SoundExchange implicitly waived the privilege as the result of Prof. Rubinfeld’s written rebuttal testimony quoted in the Background section above. iHeart is wrong.

First, there is no waiver of any kind here for the simple reason that the holders of any of the privileges—namely, UMG, Sony Music, and Warner—are not parties to this case and have not done anything to waive, or to authorize SoundExchange to waive, their privileges.

Second, *Bilzerian* and its progeny are inapplicable here. Those cases hold that a party may not put into issue its own state of mind regarding the legality of its actions and simultaneously block inquiry into privileged advice that the party’s counsel provided concerning exactly the same question of legality. In *Bilzerian* the defendant asserted a good faith defense to securities fraud charges. He filed a motion *in limine* seeking a ruling that would permit him to

testify regarding his belief in the lawfulness of his actions without being subjected to cross-examination on communications he had with his attorney on this subject. *Id.* at 1291. The district court held that if the defendant testified concerning his good faith regarding the legality of his conduct, then the defendant would open the door to cross-examination with respect to the basis for his belief, and that such cross-examination could include inquiry into communications with his attorney on these subjects. *Id.* The defendant chose not to testify regarding his good faith, and claimed on appeal that the district court's ruling prejudiced his defense. *Id.* The Second Circuit affirmed:

Bilzerian's testimony that *he thought his actions were legal would have put his knowledge of the law and the basis for his understanding of what the law required in issue.* His conversations with counsel regarding the legality of his schemes would have been directly relevant in determining the extent of his knowledge and, as a result, his intent.

926 F.2d at 1292 (emphasis added). Thus, if the defendant had "asserted his good faith, the jury would be entitled to know the basis of his understanding that his actions were legal." *Id.* at 1294. *See also In re County of Erie*, 546 F.3d 222, 228-29 (2d Cir. 2008) ("assertion of a good-faith defense involves an inquiry into state of mind, which typically calls forth the possibility of implied waiver of the attorney-client privilege"); *Bank Brussels Lambert v. Chase Manhattan Bank, N.A.*, No. 93CIV.5298 (LMM)(RLE), 1996 WL 173138, at *4 (S.D.N.Y. Apr. 12, 1996) (under *Bilzarian*, "touchstone" is that party's claim that he "thought his actions were legal put his knowledge of the law and the basis for his understanding of what the law required in issue.") (internal quotation marks omitted).

None of these considerations is present here. There is no dispute about any party's state of mind. In particular, there is no dispute that all parties, on both sides of webcasting licenses, are likely to consider how the terms of their agreements may be used as benchmarks in these proceedings. Pandora's expert, Carl Shapiro, [REDACTED]

Ehler Decl. Ex. B (Shapiro Dep. 314:1-9).

Prof. Rubinfeld has never stated otherwise. Prof. Rubinfeld's quoted statements—which concerned the Sony and Warner agreements with Apple—simply recognized that, because each of the agreements contained a provision

[REDACTED] it was more reasonable to believe that those parties' negotiations "may" have been less influenced by the shadow of the statutory license than either the Pandora-Merlin or iHeart-Warner (or iHeart-independent label) agreements that those Services affirmatively introduced as benchmarks in these proceedings.

Rubinfeld Corrected WRT App. 2 ¶ 8. None of this testimony purports to put the state of mind of any party to those agreements in issue, much less to put any party's privileged legal advice into play.⁵ Prof. Rubinfeld's more general testimony about the statutory license casting a greater

⁵ Mr. Shapiro, heeding advice from Pandora's counsel,

(footnote continued)

shadow over negotiations for non-interactive licenses than for interactive licenses also was not based on any party's state of mind. Prof. Rubinfeld instead based that unremarkable conclusion on the fact that prospective licensees for non-interactive services have the option of opting for the statutory license if they cannot achieve favorable terms. *See* Rubinfeld Corrected WRT ¶ 60 (“As I explained in my first report, for services that can use the statutory license, the statutory rate caps their willingness to pay since they can unilaterally choose to take a license or not.”).

In short, there has been no implied waiver, under *Bilzerian* or otherwise.

III. SOUNDEXCHANGE EXERCISED ITS CLAWBACK RIGHTS WITHIN THE FIVE BUSINESS DAY WINDOW OF THE PROTECTIVE ORDER

Finally, iHeart contends that SoundExchange's clawback notice was “improper” under the Protective Order because iHeart and/or the other Services affirmatively used the documents in question more than five business days prior to April 22. Mot. at 9.

In fact, all five of the documents that remain in issue were first identified by iHeart or the other Services for the first time as exhibits, served on April 16 or in their April 21 supplemental rebuttal filings. Ehler Decl. ¶ 8. iHeart expresses skepticism that SoundExchange would not have identified the inadvertent production of the documents prior to April 19 (the first date in the range (April 19-21) referenced in SoundExchange's clawback letter), but there is nothing surprising about that. The parties on all sides have been working hard to prepare for trial, and it is hardly surprising that any party might discover an inadvertently produced privileged communication as it goes through that process. Indeed, iHeart itself served a clawback notice last week. Ehler Decl. ¶ 4. iHeart seems to propose a rule that a party shows a lack of diligence over privilege claims if it identifies privileged communications amidst trial preparation. Were

(Shapiro, Dep. 253:7-22).

that the rule, then these proceedings would become even more distracted with collateral litigation over privilege assertions than the instant motion already has made them.

CONCLUSION

The Judges should deny iHeart's emergency motion.

Dated: April 27, 2015

Respectfully submitted,

By: Glenn D. Pomerantz / zk
Glenn D. Pomerantz (CA Bar 112503)
Kelly M. Klaus (CA Bar 161091)
Anjan Choudhury (DC Bar 497271)
MUNGER, TOLLES & OLSON LLP
355 S. Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560
Telephone: (213) 683-9100
Facsimile: (213) 687-3702
Glenn.Pomerantz@mto.com
Kelly.Klaus@mto.com
Anjan.Choudhury@mto.com

Counsel for SoundExchange, Inc.

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

<i>In re</i>)	
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)	
DETERMINATION OF ROYALTY)	DOCKET NO. 14-CRB-0001-WR
RATES AND TERMS FOR)	(2016-2020)
EPHEMERAL RECORDING AND)	
DIGITAL PERFORMANCE OF SOUND)	
RECORDINGS (<i>WEB IV</i>))	
)	

**DECLARATION OF ROSE LEDA EHLEH IN SUPPORT OF SOUNDEXCHANGE'S
OPPOSITION TO IHEARTMEDIA'S EMERGENCY MOTION CHALLENGING
SOUNDEXCHANGE'S ASSERTION OF PRIVILEGE AND ATTEMPT TO
CLAWBACK DOCUMENTS**

I, Rose Leda Ehler, declare as follows:

1. I am an attorney with Munger, Tolles & Olson LLP and am counsel for SoundExchange, Inc., in Docket No. 14-CRB-0001-WR (2016-2020).
2. I submit this Declaration in support of SoundExchange's Opposition to iHeartMedia's Emergency Motion Challenging SoundExchange's Assertion of Privilege and Attempt to Clawback Documents, (the "Opposition").
3. This Declaration is made based upon my personal knowledge.
4. iHeart has clawed back over 100 documents on numerous occasions throughout discovery. On November 18, 2014, iHeart clawed back five documents; on November 25th iHeart clawed back 127 documents; on March 9, 2015, iHeart clawed back three documents; on April 6, iHeart clawed back nine documents; and on April 20, iHeart clawed back seven documents.

5. Exhibit A is an excerpt from the deposition of Mr. Steven Cutler which took place on April 2, 2105. At several instances during that deposition, Mr. Thorne, counsel for iHeart, limited questioning as to documents that reflected communications with iHeart lawyers. The deposition was designated restricted by iHeart.

6. Pandora has clawed back over 60 documents throughout the course of discovery in this proceeding.

7. Exhibit B is an excerpt from the deposition of Prof. Carl Shapiro which took place on March 31, 2015. The deposition was designated restricted by Pandora.

8. SoundExchange discovered the five privileged documents described in the Opposition while reviewing the Licensees' exhibits for evidentiary objections and when reviewing the Licensees' supplemental written rebuttal testimony. For example, Exhibit 4 (SNDEX0252015) was quoted in Dr. Shapiro's supplemental rebuttal testimony; Exhibit 5 (SNDEX0259841) was listed as Pandora's Exhibit 5159 which was served on April 16, 2015; and Exhibit 6 (SNDEX0259933) was quoted in Prof. Fischel/Lichtman's supplemental rebuttal testimony.

9. Exhibits A and B and portions of the Opposition contain information previously designated as "Restricted" by SoundExchange and iHeartMedia. Pursuant to the terms of the October 10, 2014, Protective Order, SoundExchange is filing these Restricted materials under seal and is redacting these materials from its Public filing.

10. The Declarations of Mr. Scott Bauman, Mr. Jeff Walker, and Ms. Ellen Hochberg also contain confidential and competitively sensitive information. Pursuant to 37 C.R.F. § 350.4(e)(1) and the Protective Order, SoundExchange, through its undersigned counsel, certifies that these materials are "Protected Materials," as that term is defined in the Protective Order ¶

III. SoundExchange hereby designates these materials as Restricted.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury under the laws of the United States that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: April 27, 2015

/s/ Rose Leda Ehler

Rose Leda Ehler
MUNGER, TOLLES & OLSON LLP
355 S. Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560
Telephone: (213) 683-9100
Facsimile: (213) 687-3702
Rose.Ehler@mto.com

Counsel for SoundExchange, Inc.

EXHIBIT A

**RESTRICTED – Subject to Protective Order in
Docket No. 14 – CRB – 0001 – WR (2016-2020)(Web IV)**

EXHIBIT B

**RESTRICTED – Subject to Protective Order in
Docket No. 14 – CRB – 0001 – WR (2016-2020)(Web IV)**

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

In re

**DETERMINATION OF ROYALTY
RATES AND TERMS FOR
EPHEMERAL RECORDING AND
DIGITAL PERFORMANCE OF SOUND
RECORDINGS (*WEB IV*)**

**DOCKET NO. 14-CRB-0001-WR
(2016-2020)**

DECLARATION OF SCOTT BAUMAN

I, SCOTT BAUMAN, DECLARE:

1. I am Vice President, Litigation Counsel, Business and Legal Affairs at UMG Recordings, Inc. ("UMG"). I submit this declaration in support of SoundExchange, Inc.'s ("SoundExchange") Opposition to iHeartMedia, Inc.'s ("iHeart") Emergency Motion Challenging SoundExchange's Assertion of Privilege and Attempt to Clawback Documents ("Emergency Motion"). The matters set forth in this declaration are based on my own personal knowledge or, where indicated, I have been informed of those matters and believe them to be true. If called as a witness in these proceedings, I could and would testify competently to the contents of this declaration.

2. One of my responsibilities as Vice President of Litigation at UMG is to provide legal advice to, among others groups, our Global Digital Business department. I am very familiar with the sorts of legal advice that I and other corporate attorneys, including our General Counsel, are asked to provide. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. I understand that iHeart's Motion challenges the assertion of privilege over a number of documents produced by SoundExchange. The purpose of this declaration is to set forth the basis on which UMG maintains its assertion of privilege over the documents identified with the following Exhibit (to iHeart's Motion) and Bates number: Exhibit 4 (SNDEX0252015). In providing this Declaration, I intend to describe the general nature of the documents in a manner that allows the Judges to understand the basis for the privilege claim without revealing the substance of the privileged communications themselves.

4. The redacted portions of Exhibit 4 (SNDEX0252015) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]

[REDACTED]

[REDACTED]

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury under the laws of the United States that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: April 27, 2015



Scott Bauman

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

In re

DETERMINATION OF ROYALTY
RATES AND TERMS FOR
EPHEMERAL RECORDING AND
DIGITAL PERFORMANCE OF SOUND
RECORDINGS (*WEB IV*)

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) DOCKET NO. 14-CRB-0001-WR
) (2016-2020)
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DECLARATION OF ELLEN HOCHBERG

I, ELLEN HOCHBERG, DECLARE:

1. I am Vice President of Litigation at Warner Music Group ("Warner"). I submit this declaration in support of SoundExchange, Inc.'s ("SoundExchange") Opposition to iHeartMedia, Inc.'s ("iHeart") Emergency Motion Challenging SoundExchange's Assertion of Privilege and Attempt to Clawback Documents ("iHeart's Motion"). The matters set forth in this declaration are based on my own personal knowledge or, where indicated, I have been informed of those matters and believe them to be true. If called as a witness in these proceedings, I could and would testify competently to the contents of this declaration.

2. In my role as Vice President of Litigation at Warner, I provide legal advice to Warner as a part of my day-to-day work. I am very familiar with the sorts of legal advice that I and other Warner attorneys provide to our company. [REDACTED]

[REDACTED]

[REDACTED]

3. I understand that iHeart's Motion challenges the assertion of privilege over a number of documents produced by SoundExchange. The purpose of this declaration is to set

forth the basis on which Warner maintains its assertion of privilege over the document identified with the following Exhibit (to iHeart's Motion) and Bates number: Exhibit 1 (SNDEX0126901). In providing this Declaration, I intend to describe the general nature of the documents in a manner that allows the Judges to understand the basis for the privilege claim without revealing the substance of the privileged communications themselves.

4. The redacted portion of Exhibit 1 (SNDEX0126901) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. [REDACTED]

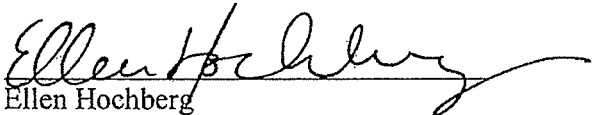
[REDACTED]

[REDACTED]

[REDACTED]

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury under the laws of the United States that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: April 26, 2015


Ellen Hochberg

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
 Library of Congress
 Washington, D.C.

In re

**DETERMINATION OF ROYALTY
 RATES AND TERMS FOR
 EPHEMERAL RECORDING AND
 DIGITAL PERFORMANCE OF SOUND
 RECORDINGS (*WEB IV*)**

**DOCKET NO. 14-CRB-0001-WR
 (2016-2020)**

DECLARATION OF JEFF WALKER

I, JEFF WALKER, DECLARE:

1. I am Executive Vice President, Business & Legal Affairs, Global Digital Business at Sony Music Entertainment ("Sony Music"). I submit this declaration in support of SoundExchange, Inc.'s ("SoundExchange") Opposition to iHeartMedia, Inc.'s ("iHeart") Emergency Motion Challenging SoundExchange's Assertion of Privilege and Attempt to Clawback Documents ("Emergency Motion"). The matters set forth in this declaration are based on my own personal knowledge or, where indicated, I have been informed of those matters and believe them to be true. If called as a witness in these proceedings, I could and would testify competently to the contents of this declaration.

2. I am the head of the Business & Legal Affairs group for the Global Digital Business and the most senior legal adviser within the Global Digital Business. Part of my day-to-day responsibility is to provide, or to facilitate the provision of (through outside counsel or other in-house lawyers at Sony Music), legal advice for members of the Global Digital Business.

[REDACTED]

[REDACTED]

[REDACTED]

3. I understand that iHeart's Motion challenges the assertion of privilege over a number of documents produced by SoundExchange. The purpose of this declaration is to set forth the basis on which Sony Music maintains its assertion of privilege over the documents identified with the following Exhibits (to iHeart's Motion) and Bates numbers: Exhibit 5 (SNDEX0259841), Exhibit 6 (SNDEX0259933), and Exhibit 7 (SNDEX0259973). In providing this Declaration, I intend to describe the general nature of the documents in a manner that allows the Judges to understand the basis for the privilege claim without revealing the substance of the privileged communications themselves.

4. Exhibit 5 (SNDEX0259841) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. The portions of Exhibit 6 (SNDEX0259933) redacted by SoundExchange

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. The portions of Exhibit 7 (SNDEX0259973) redacted by SoundExchange

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury under the laws of the United States that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: April 27, 2015



Jeff Walker

CERTIFICATE OF SERVICE

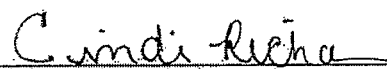
I hereby certify that on April 27, 2015, I caused a copy of the foregoing PUBLIC — (1) **SOUNDEXCHANGE’S OPPOSITION TO IHEARTMEDIA’S EMERGENCY MOTION CHALLENGING SOUNDEXCHANGE’S ASSERTION OF PRIVILEGE AND ATTEMPT TO CLAWBACK DOCUMENTS** (2) **DECLARATION OF ROSE LEDA EHLER**; (3) **DECLARATION OF SCOTT BAUMAN**; (4) **DECLARATION OF JEFF WALKER**; AND (5) **DECLARATION OF ELLEN HOCHBERG** to be served via electronic mail and United States Mail, first class, postage prepaid addressed as follows:

Kurt Hanson AccuRadio, LLC 65 E. Wacker Place, Suite 930 Chicago, IL 60601 kurt@accuradio.com Telephone: (312) 284-2440 Facsimile: (312) 284-2450 <i>AccuRadio, LLC</i>	George D. Johnson, an individual d.b.a. Geo Music Group 23 Music Square East, Suite 204 Nashville, TN 37203 E-mail: george@georgejohnson.com Telephone: (615) 242-9999 <i>George D. Johnson (GEO), an individual and digital sound recording copyright creator d.b.a. Geo Music Group</i>
Kevin Blair Brian Gantman Educational Media Foundation 5700 West Oaks Boulevard Rocklin, CA 95765 kblair@kloveair1.com bgantman@kloveair1.com Telephone: (916) 251-1600 Facsimile: (916) 251-1731 <i>Educational Media Foundation</i>	Donna K. Schneider Associate General Counsel, Litigation & IP iHeartMedia, Inc. 200 E. Basse Rd. San Antonio, TX 78209 DonnaSchneider@iheartmedia.com Telephone: (210) 832-3468 Facsimile: (210) 832-3127 <i>iHeartMedia, Inc.</i>
Frederick Kass Intercollegiate Broadcasting System, Inc. (IBS) 367 Windsor Highway New Windsor, NY 12553-7900 ibs@ibsradio.org ibshq@aol.com Telephone: (845) 565-0003 Facsimile: (845) 565-7446 <i>Intercollegiate Broadcasting System, Inc. (IBS)</i>	Jane Mago, Esq. Suzanne Head 1771 N Street, NW Washington, DC 20036 jmago@nab.org shead@nab.org Telephone: (202) 429-5459 Facsimile: (202) 775-3526 <i>National Association of Broadcasters (NAB)</i>

<p>Russ Hauth, Executive Director Harv Hendrickson, Chairman 3003 Snelling Avenue, North Saint Paul, MN 55113 russh@saalem.cc hphendrickson@unwsp.edu Telephone: (651) 631-5000 Facsimile: (651) 631-5086 National Religious Broadcasters NonCommercial Music License Committee (NRBNMLC)</p>	<p>Gregory A. Lewis National Public Radio, Inc. 1111 North Capital Street, NE Washington, DC 20002 glewis@npr.org Telephone: (202) 513-2050 Facsimile: (202) 513-3021 National Public Radio, Inc. (NPR)</p>
<p>Patrick Donnelly Sirius XM Radio, Inc. 1221 Avenue of the Americas 36th Floor New York, NY 10020 patrick.donnelly@siriusxm.com Telephone: (212) 584-5100 Facsimile: (212) 584-5200 Sirius XM Radio Inc.</p>	<p>Cynthia Greer Sirius XM Radio, Inc. 1500 Eckington Place, NE Washington, DC 20002 cynthia.greer@siriusxm.com Telephone: (202) 380-1476 Facsimile: (202) 380-4592 Sirius XM Radio Inc.</p>
<p>Christopher Harrison Pandora Media, Inc. 2101 Webster Street, Suite 1650 Oakland, CA 94612 charrison@pandora.com Telephone: (510) 858-3049 Facsimile: (510) 451-4286 Pandora Media, Inc.</p>	<p>David Oxenford WILKINSON BARKER KNAUER, LLP 2300 N Street, NW, Suite 700 Washington, DC 20037 doxenford@wbklaw.com Telephone: (202) 373-3337 Facsimile: (202) 783-5851 Counsel for Educational Media Foundation and National Association of Broadcasters (NAB)</p>
<p>Jeffrey J. Jarmuth Law Offices of Jeffrey J. Jarmuth 34 E. Elm Street Chicago, IL 60611-1016 Telephone: (312) 335-9933 Facsimile: (312) 822-1010 Jeff.jarmuth@jarmuthlawoffices.com Counsel for AccuRadio, LLC</p>	<p>William Malone 40 Cobbler's Green 205 Main Street New Canaan, CT 06840 Malone@ieee.org Telephone: (203) 966-4770 Counsel for Harvard Radio Broadcasting Co., Inc. (WHRB) and Intercollegiate Broadcasting System, Inc. (IBS)</p>

<p> Bruce Joseph, Karyn Ablin Michael Sturm, Jillian Volkmar WILEY REIN LLP 1776 K Street, NW Washington, DC 20006 bjoseph@wileyrein.com kablin@wileyrein.com msturm@wileyrein.com JVolkmar@wileyrein.com Telephone: (202) 719-7000 Facsimile: (202) 719-7049 <i>Counsel for National Association of Broadcasters (NAB)</i> </p>	<p> Kenneth L. Steinthal, Joseph R. Wetzel Ethan Davis KING & SPALDING LLP 101 Second Street, Suite 2300 San Francisco, CA 94105 ksteinthal@kslaw.com jwetzel@kslaw.com edavis@kslaw.com Telephone: (415) 318-1200 Facsimile: (415) 318-1300 <i>Counsel for National Public Radio, Inc. (NPR)</i> </p>
<p> Mark Hansen, John Thorne Evan Leo, Scott Angstreich, Kevin Miller, Caitlin Hall, Igor Helman, Leslie Pope, Matthew Huppert KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C. 1615 M Street, NW, Suite 400 Washington, DC 20036 Mhansen@khhte.com Jthorne@khhte.com eleo@khhte.com sangstreich@khhte.com kmiller@khhte.com chall@khhte.com ihelman@khhte.com lpope@khhte.com mhuppert@khhte.com Telephone: (202) 326-7900 Facsimile: (202) 326-7999 <i>Counsel iHeartMedia, Inc.</i> </p>	<p> R. Bruce Rich, Todd Larson Sabrina Perelman, Benjamin E. Marks WEIL, GOTSHAL & MANGES LLP 767 Fifth Avenue New York, NY 10153 r.bruce.rich@weil.com todd.larson@weil.com sabrina.perelman@weil.com benjamin.marks@weil.com Telephone: (212) 310-8170 Facsimile: (212) 310-8007 <i>Counsel for Pandora Media, Inc.</i> </p>
<p> Karyn Ablin Jennifer Elgin WILEY REIN LLP 1776 K St. N.W. Washington, DC 20006 kablin@wileyrein.com jelgin@wileyrein.com Telephone: (202) 719-7000 Facsimile: (202) 719-7049 <i>Counsel for National Religious Broadcasters NonCommercial Music License Committee (NRBNMLC)</i> </p>	<p> Jacob B. Ebin Akin Gump Strauss Hauer & Feld LLP One Bryant Park Bank of America Tower New York, NY 10036-6745 jebin@akingump.com Telephone: (212) 872-7483 Facsimile: (212) 872-1002 <i>Counsel for Pandora Media Inc.</i> </p>

<p>Gary R. Greenstein WILSON SONSINI GOODRICH & ROSATI 1700 K Street, NW, 5th Floor Washington, DC 20006 ggreenstein@wsgr.com Telephone: (202) 973-8849 Facsimile: (202) 973-8899 <i>Counsel for Pandora Media Inc.</i></p>	<p>Paul Fakler Arent Fox LLP 1675 Broadway New York, NY 10019 Paul.Fakler@arentfox.com Telephone: (212) 484-3900 Fax: (212) 484-3990 <i>Counsel for Sirius XM Radio Inc.</i></p>
<p>Martin F. Cunniff Jackson D. Toof Arent Fox LLP 1717 K Street, N.W. Washington, D.C. 20006-5344 Martin.Cunniff@arentfox.com Jackson.Toof@arentfox.com Telephone: (202) 857-6000 Fax: (202) 857-6395 <i>Counsel for Sirius XM Radio Inc.</i></p>	<p>Catherine Gellis P.O. Box 2477 Sausalito, CA 94966 cathy@ecgcounsel.com Telephone: (202) 642-2849 <i>Counsel for College Broadcasters Inc. (CBI)</i></p>
<p>Antonio E. Lewis King & Spalding, LLP 100 N. Tryon Street, Suite 3900 Charlotte, NC 28202 Tel: 704-503-2583 Fax: 704-503-2622 E-Mail: alewis@kslaw.com <i>Counsel for National Public Radio, Inc. (NPR)</i></p>	<p>David Golden CONSTANTINE CANNON LLP 1001 Pennsylvania Ave. NW, Suite 1300N Washington, DC 20004 dgolden@constantinecannon.com Telephone: (202) 204-3500 Facsimile: (202) 204-3501 <i>Counsel for College Broadcasters Inc. (CBI)</i></p>


Cindi Richardson